



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2012

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
Lubbock County District Attorneys Office
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2012-16291

Dear Ms. Clarke:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 467626.

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for a specified autopsy report. You state the requested information is the subject of an order entered by a Justice of the Peace for Concho County (the "JP") and is related to an investigation by the Texas Rangers. We have considered your arguments and reviewed the information you submitted.

We first note the medical examiner's office did not comply with section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342

(Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

Although you submitted arguments against disclosure of the submitted information in requesting this decision, you did not claim any exceptions to disclosure of the information at issue. Thus, the medical examiner's office did not comply with section 552.301(b), and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Based on your arguments, we understand the medical examiner's office to claim sections 552.107(2) and 552.108 of the Government Code. As a claim under section 552.107(2) can provide a compelling reason for non-disclosure under section 552.302, we will address that exception. Although section 552.108 of the Government Code is a discretionary exception to disclosure a governmental body may waive, the law enforcement interests under this exception of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *but see* Open Records Decision No. 586 at 2-3 (1991) (district attorney's office that failed to comply with statutory predecessor to Gov't Code § 552.301 could withhold information under statutory predecessor to Gov't Code § 552.108 to protect law enforcement interests of Texas Department of Public Safety). Thus, as you initially stated the Texas Rangers may have a law enforcement interest in the submitted information, we will determine whether the information may be withheld on their behalf under section 552.108.

We next note the submitted information is a completed autopsy report subject to section 552.022(a) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is made confidential under the Act or other law or excepted from disclosure under section 552.108. Gov't Code § 552.022(a)(1). Section 552.107(2) of the Government Code provides that "[i]nformation is excepted from [required public disclosure] if . . . a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). Section 552.022(b) of the Government Code provides as follows:

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is confidential under [the Act] or other law.

Id. § 552.022(b). Thus, pursuant to section 552.022(b), a court may not order a governmental body to withhold from the public information encompassed by section 552.022(a) unless the information is confidential under the Act or other law. That is, the Act does not allow a court to withhold from disclosure information the Texas Legislature has determined to be expressly public. You inform us the JP has entered an order sealing a copy of the submitted report maintained by his office. You have not submitted a copy of the JP's order, however, or otherwise demonstrated that his order makes the submitted information confidential under the Act or other law. Therefore, because a court cannot order the medical examiner's office to withhold information encompassed by section 552.022(a) unless the information is confidential under the Act or other law, we conclude the medical examiner's office may not withhold the submitted information under section 552.107(2) of the Government Code.

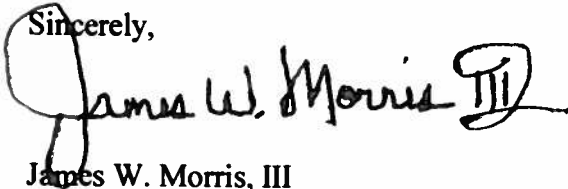
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *Id.* § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

In requesting this decision, the medical examiner's office indicated the submitted information was related to an ongoing investigation by the Texas Rangers. You have since informed us, however, the Texas Rangers have closed their case and do not assert a law enforcement interest in the information at issue under section 552.108. Thus, as there is no indication that release of the information at issue would interfere with the detection, investigation, or prosecution of crime, we conclude the medical examiner's office may not withhold the submitted information under section 552.108(a)(1) of the Government Code. *See Gov't Code* § 552.108(a)(1). Therefore, as the medical examiner's office claims no other exception to disclosure, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looped initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 467626

Enc: Submitted documents

c: Requestor
(w/o enclosures)